

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

**BRIAN M. POWELL and TIFFANY
POWELL,**

Plaintiffs,

v.

Case No: 6:18-cv-624-Orl-41LRH

**MORGAN PROPERTY SOLUTIONS,
INC.,**

Defendant.

ORDER

THIS CAUSE is before the Court on Plaintiffs' Motion to Dismiss (Doc. 76) and Defendant's Motion for Sanctions (Doc. 74). United States Magistrate Judge Leslie R. Hoffman issued a Report and Recommendation ("R&R," Doc. 78) in which she recommends: (1) granting the Motion to Dismiss; (2) granting in part the Motion for Sanctions; (3) dismissing the case without prejudice; and (4) requiring Plaintiffs to pay Defendant's attorney's fees and costs, including the costs of the court reporter, incurred in the preparation for, and attendance at, the September 25, 2019 deposition of Mr. Powell as a prerequisite for refiling Plaintiffs' claims against Defendant.

After a *de novo* review of the record, and noting that no objections were timely filed, the R&R will be adopted in part and rejected in part. In the R&R, Judge Hoffman aptly describes the history of this litigation as a tortured one. In the latest chapter, Mr. Powell refused to attend a deposition notwithstanding three separate warnings from the Court that sanctions would be considered in response to any such failure to comply. It is also worth noting that Judge Hoffman granted Mr. Powell multiple accommodations to facilitate the deposition, including the

requirement that the deposition be held at Mr. Powell's residence, that counsel for Defendant attend the deposition remotely, and that only the court reporter be present at Mr. Powell's residence during the deposition. Mr. Powell disregarded Judge Hoffman's Order. When the court reporter arrived for the deposition, Mr. Powell refused to answer the door. Mr. Powell also refused to answer his phone that morning causing the court reporter to wait outside for thirty minutes before finally departing.

It is therefore **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 78) is **ADOPTED in part** and **REJECTED in part** as indicated below:

- a. Plaintiffs' Motion to Dismiss (Doc. 76) is **GRANTED in part**.

- i. The case is **DISMISSED without prejudice** in its entirety as to Plaintiff Tiffany Powell.

- ii. The Motion to Dismiss is **DENIED** as to Plaintiff Brian M. Powell.

- b. Defendant's Motion for Sanctions (Doc. 74) pursuant to Rule 37 and Rule 41(b) is **GRANTED in part**.

- i. The case is **DISMISSED without prejudice** in its entirety as to Plaintiff Tiffany Powell.

- ii. The case is **DISMISSED with prejudice** as to Plaintiff Brian M. Powell.

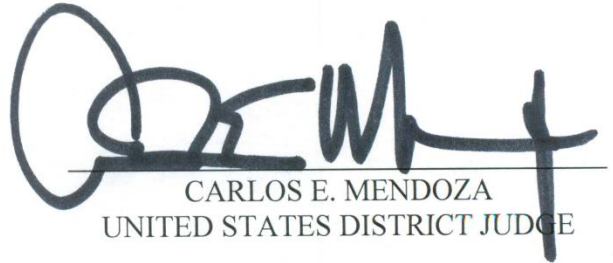
- iii. The motion is otherwise **DENIED**.

2. If Plaintiff Tiffany Powell wishes to refile her claims against Defendant, she will be required to pay Defendant's attorney's fees and costs pursuant to Federal Rule of Civil Procedure 41(d).

3. All pending motions are **DENIED as moot**.

4. The Clerk is directed to close the case.

DONE and **ORDERED** in Orlando, Florida on December 13, 2019.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties